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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,152	09/26/2000	Sean M. Whitsell	7000-008	4838
27820	7590	07/13/2004	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C.			BEAULIEU, YONEL	
P.O. BOX 1287			ART UNIT	PAPER NUMBER
CARY, NC 27512			3661	

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/670,152	WHITSELL, SEAN M.	
	<b>Examiner</b> Yonel Beaulieu	<b>Art Unit</b> 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 May 2004.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-51 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 and 17-51 is/are rejected.

7) Claim(s) 13-16 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

***Response to Arguments***

Applicant's arguments filed 5/4/04 have been fully considered but they are not persuasive.

Regarding the argument in the first paragraph (first remarks page 12), the Examiner has no record/recollection of Applicant attempting to schedule a telephonic interview to discuss the Application. Applicant is apparently referring to a different Application relating a different Examiner.

Regarding Applicant's argument (last two paragraphs - page 12 of remarks), the Examiner maintains the claim limitations need not be rejected in the order claimed.

Regarding the arguments linking the second paragraph on page 13 (remarks section) through the second to last paragraph on page 14, applicant argues the reference does not teach traffic information. The Examiner disagrees. It is clear from the reference that traffic information is taught (col. 30: 47 – 60 at least could not be more specific; see also figs. 1, 3, 5 – 7).

In view of the above, the rejection is proper and is hereby maintained.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 12 and 17 – 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Moroto et al. (US 5,612,881).

Regarding claims 1 - 12 and 17 - 51, Moroto teaches, in a vehicular environment, determining if travel on a learned route when requested by a user through a mobile terminal is likely (col. 6: 45 – 58; col. 23: 51 – 60; figs. 46, 49) and delivering the information (via item 15 or 17; figs. 1 and 2 at least) to the user (col. 23: 20 – 40 at least); the traffic information query being from the user's cellular telephone and receiving at least one location value representing a location of user's cellular telephone (col. 23: 66 – col. 24: 8 at least); a wireless communications interface (item 49 in fig. 2 or item 1040 in fig. 49) *adapted* to communicate with a remote communications network for providing the traffic information (col. 24: 16 – 28 at least); the traffic information being provided over a period of time (see figs. 4b, 4c, 7, 44 at least); determining direction of travel (by way of item 1025 in fig. 49), wherein present and successive location correlation is supported by item 1020 in fig. 49; the traffic information being

provided pertinent to an indication of undesirable condition and providing for alternate route based upon the undesirable condition (col. 30: 47 – 60 at least); recording of data (by way of item 35 in fig. 1; items 41 – 43 in fig. 2) and first and second commands (using items 2 and 4 in fig. 1 at least).

***Allowable Subject Matter***

Claims 13 – 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record fail to suggest a method for determining learned route comprising processing data such that locations having a most frequent rate of occurrence in the data are identified and associated based upon a location value to form at least one group of associated locations using a weighted averaging algorithm.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (703) 305-4072. The examiner can normally be reached on M-R, from 0900-1600.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Y. BEAULIEU  
AU 3661  
YONEL BEAULIEU  
PRIMARY EXAMINER